Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-89

VIRGINIA W. LUCOM, *Petitioner*

v.

DAVID L. REID, ETC., et al., *Respondents*

On Appeal from the United States Court of Appeals for the Fifth Circuit

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PETITIONER'S REPLY TO RESPONDENTS' BRIEFS IN OPPOSITION

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A. Opposition Briefs, Like Decisions Below, Refuse to Recognize Civil Rights Case, Such as Entire Second Count of Complaint.

A conspiracy in violation of 42 USC 1985 is alleged to exist prior to the time any assessment problem arose (Petition, pp. 11(a) through 13(a), being paragraphs 35 through 38 of the Complaint) and the assessor merely joined such conspiracy then in progress to add illegal assessment to the concerted program of zoning as a park and other activities of county officials to thwart

any normal uses of petitioner's private property. Thus defendants are using 28 USC 1341 to shield them from an actionable civil rights conspiracy. Such was under way long before the illegal taxation ever became a part of it.

B. Exhaustion of State Remedy Not Required In Civil Rights Case Re Property.

With reference to the suggestion in Opposition briefs that regarding Second Count of Complaint and zoning of private lands as a park, petitioner should have first exhausted her state remedies, this has never been required. *Powel* v. *Comp. Board,* 327 F 2d 131 and *Scolnick* v. *Winston,* 329 F 2d 716. Moreover, 42 USC 1983 has been held to expressly authorize exception to the anti-injunction section, 42 USC 2283 in *Mitchum* v. *Foster,* 407 US 225 at 242.

That property is a civil right in contemplation, of 42 USC 1983, see *Lynch* v. *Household Finance,* 405 US 538 at 544 and 552.

Indeed, it could well be argued that the sweep of 42 USC 1983 is so complete that the federal constitution supremacy doctrine would pre-empt the area of infraction as was held in *Pennsylvania* v. *Nelson,* 350 US 497 with reference to another area of conduct.

C. Florida Attorney General's and Other Beliefs In Opposition to Petition Admit Florida Has No Procedure for Florida Real Estate Taxpayer to Obtain EQUALITY of Tax to Other Similarly Situated Parcels Except on Showing that Each and Every Other Taxpayer Was Taxed on a Uniformly Different Basis.

Misconstruing and misapplying the traditional standard set by this Court in *Sioux City Bridge* v. *Dakota County,* 260 US 441 at 446 for compliance with the

equal protection clause of the Fourteenth Amendment, namely, that the property be both (a) fairly valued and (b) equally assessed for real estate taxation, the Florida statutes, procedures and decisions afford no relief for a real estate taxpayer claiming unequal assessment unless he can prove that all (that is, each and every) other tax assessment are on a different basis from complainant's basis.

Thus in this *Lucom* case, petitioner's property was assessed for 1974 at twenty times that of scores of abutting and adjoining property with identical characteristics (Petition, (Complaint), page 3a, paragraph 5).

For the year 1975, petitioner's assessment was reduced 70% (Petition, page 17(a)) and adjoining and abutting property raised to equal that of petitioner's realty. Thus, belatedly admitting equal assessments would be just, the 1974 assessment here on appeal stands at twenty times that of scores of identical abutting and adjoining parcels, with an asserted market value six times higher than assessed in 1974. To obtain an assessment equal to that of the surrounding parcels for 1974 Florida law would require petitioner to prove that *all* land, except hers, in the county, or perhaps in the entire State, was assessed in the same ratio to fair market value in order for petitioner to get equality with her neighbors. There is no procedure for the petitioner to intervene in the assessed value assigned to other property owners. And there is no way for petitioner to obtain equality to all her neighbors unless she could prove, in effect, that no one else in the entire county was assessed up to fair market value.

The places in the opposing briefs where this illegal and illogical interpretation that *Sioux City Bridge, supra,* etc. provides equality is only when complainant is the single exception to an otherwise uniform standard are:

1. The Florida Attorney General's brief (white cover)
   (a) page 26, line 15, "While *all* other property within the taxing district was being assessed at approximately 80% of just value"
   (b) page 27, line 5, "but at a higher percentage than *all* property in the taxing district"
   (c) page 27, line 9 "upon the allegation that *all* property in the county was assessed at 47% of full value while the taxpayer's property was assessed at 87% of full cash value"
   (d) page 27, line 15 "a taxpayer who is assessed at a substantially higher level than *all other* property in the taxing district"
2. Brief of Respondent Clark, Tax Collector, et al (light blue cover)
   (a) page 4, line 15 "relief will be granted to a taxpayer who alleges that there is a systematic assessment of *all property* at a lower percentage of full value than the percentage attributed to his property"
   (b) page 14, line 18 "The Florida Supreme Court cited the *Sioux City* case which holds the same effect, that is, that where *all* others are assessed at less than 10% of value, the taxpayer is entitled to relief."

3. Brief on Behalf of Respondent Reid, Property Appraiser, et al (dark blue cover)
   (a) page 4, line 27 "*all the other real estate* and its improvements *in the county* at 58%."
   (b) page 5, line 2 "This Court holds that the right of the taxpayer whose property *alone* is taxed at 100% of its true value is to have his assessment reduced . . ."
   (c) page 5, line 10 "there is a systematic assessment of *all* property at a lower percentage."
   (d) page 5, line 15 "that where *all* others are assessed at less than 100% of value." (Italics added)

All Florida Courts and Officials Are Thus Seizing Upon Language in *Sioux City* case, supra, to Deny Constitutionally Required Equity Unless Complainant Is Sole Victim In Taxing District. *Hillsborough,* and Common Sense Require Otherwise.

"The right is the right to equal treatment." *Hillsborough* v. *Cromwell,* 326 US 620 at 623, cited in petition.

The Florida interpretation of the constitutional requirement is erroneous because (a) it requires that complainant be the sole victim of the inequality and (b) it requires victim to so prove that he alone was so victimized.

In *Sunday Lake Iron* v. *Wakefield,* 247 U.S. 350 at 352-3, this Court stated

> The purpose of the equal protection clause of the 14th Amendment is to secure every person within the state's jurisdiction against intentional

and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond* v. *Chicago Union Traction Co.* 207 U.S. 20, 35, 37, 52 L. ed. 78, 87, 88, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757.

In *Hillsborough* v. *Cromwell,* supra, this Court stated

> The rule was stated in *Royal Mfg. Co.* v. *Board of Equalization,* 76 N.J.L. 402, 70 A. 978, affirmed 78 N.J.L. 337, 74 A. 525, as follows:
>
> "* * * the county boards are required to secure taxation of all property at its true value; so that the fact that the property of A. is assessed at its true value, and the property of other taxpayers within the same district is assessed below its true value, affords A. no ground for demanding a reduction of his valuation, though it does entitle him to apply for an increase in the valuation of the others."
>
> 76 N.J.L. pages 404, 405, 70 A. page 979. On the basis of that rule it is plain that the state remedy is not adequate to protect respondent's rights under the federal Constitution.

Similarly, the petitioner's dilemma in trying to prove that *all* other realty in Palm Beach County was uniformly assessed is too onerous a burden and administratively unworkable to provide practical uniformity.

See also *Georgia R.* v. *Redwine,* 342 U.S. 299 at 303, holding similar "remedies" adequate to deprive district courts jurisdiction under 28 U.S.C. 1341.

Florida's Erroneous Requirement That ALL Others Be Dissimilarly Assessed Contrary to Holding in Cumberland Coal, 234 U.S. 23.

Indeed in *Cumberland Coal* v. *Board, etc.,* 234 U.S. 23, this Court applied the principle of equality under the *Sioux City* case, *supra,* doctrine to each of seven different cases which were consolidated and applied to seven different taxpayers, thus completely refuting the strained construction of Florida courts that complainant must be the sole victim of inequality in a tax district to get relief. The assessment pattern in *Cumberland, supra,* is very similar to that of this petitioner's case, but under the Florida construction no relief would be available to petitioner.

D. All Florida's Statutory Remedies Cited In Florida Attorney General's (white covered) Brief Relate to Procedural Law Which In Nowise Contravenes Florida's Substantive Law Making Equality Relief Available Only On Proof Complainant Is Sole Victim of Inequality In Entire Taxing District.

Since the substantive laws of Florida, as established in section C of this reply, supra, deny equality to petitioner, what difference does it make whether, or by how many ways a complainant can get into court just to be denied the federal guarantee of equality?

As Justice Frankfurter emphasized in *Nashville* v. *Browning,* 310 U.S. 362, dealing with comparable tax statutes:

> It would be a narrow conception of jurisprudence to confine the notion of "laws" to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice cannot supplant constitutional guarantees, but it can establish what is state law. The Equal Protection Clause did not write an

empty formalism into the Constitution. Deeply embedded traditional ways of carrying out state policy, such as those of which petitioner complains, are often tougher and truer law than the dead words of the written text.

E. Florida's Equitable Remedy (F. S. 68.01) Has Been Held Unavailable Unless Tax "Illegal" as a Matter of Law.

The illegal assessments which may be remedied under F.S. 68.01, the only equitable remedy possible, were discussed in 33 So. 291, wherein the Florida Supreme Court said:

> It was held in *Shear* v. *Commissioners,* 14 Fla. 146, that the statute giving a remedy for an illegal assessment embraces those assessments only in which there is error in matters of law, and that the judgment of the county commissioners upon a complaint for the abatement of a tax is a judicial act, in which the exercise of their discretion in fixing values cannot be revised by any other tribunal. It is said in the opinion, "Illegal assessments (that is, assessments wherein, independent of the exercise of a discretion as to value, there appears error in matter of law) are the assessments for which a party has a remedy by petition" under the statute. Under this ruling it was again announced in City of *Tampa* v. *Mugge,* 40 Fla. 326, 24 South, 489, that the remedy provided by the statute does not extend to the correction of a mere erroneous exercise of official judgment on the part of tax officers as to the valuation of property. It is evident, as was said in one case, that the statute does not undertake to give a remedy coextensive with the powers of a court of equity to prevent the collection of taxes. It is confined entirely to "illegality" of assessments, and when this is found to exist the court must "declare the assessment not lawfully made." In case of illegality resulting entirely in an overvaluation of property, the court would have no power under the remedy given by the statute to adjust values, but would be compelled to declare the assessment entirely unlawful; and the party might escape taxation entirely, though his property be liable thereto, based on its cash valuation. There are other features of the statute, indicating that it should not have a very broad scope. It does not seem to contemplate any power in the circuit judge to suspend action under the tax proceedings pending the hearing under the petition, nor is there anything said in the statute as to who shall be made parties defendant. It is a remedy allowed by the state in favor of persons and bodies corporate to have annulled an assessment of property in proceedings to collect revenue for governmental purpose on account of illegality in matters of law connected with the assessment. This court has acted under and enforced the statute in cases where petitions have been filed against county commissioners and municipal bodies. We are of opinion that the remedy given by the statute does not extend to individual assessments made by a county tax assessor, where the alleged illegality is confined entirely to, or results solely in, an excessive valuation of the property, whether it be in an erroneous exercise of judgment as to value, or the adoption of an erroneous principle in placing values.

Thus equitable relief under Florida law is not available to the petitioner or at best, so uncertain, under the *Hillsborough* case, *supra,* standard as to preclude applicability of 28 U.S.C. 1341.

Clearly the present Florida law provides no "plain, speedy and efficient remedy" for petitioner because (1) no equality is actually available under any circumstance short of proving petitioner was sole victim in

taxing district and (2) what partial relief as may be available is neither complete or certain. (See *Green* v. *Louisville,* 224 U.S. at 520, quoted at page 21 of petition.)

That the Fifth Circuit in *Carson* v. *City of Fort Lauderdale,* 293, F.2d 337 in 1961, may have found otherwise, now, sixteen years later, the Florida statutes have changed markedly and *Camp Phosphate* v. *Allen,* 81 So. 503, was overruled (see page 22 of petition) and the erroneous *Cosen* rule which does not require equity established (see pages 22-23 of petition).

F. Florida Newspaper Decries Vice of Present Inequality And Related Temptations and Evils.

In its November 24, 1976 edition, the responsible *Palm Beach Times,* the leading newspaper in Palm Beach County, Florida, featured its editorial denouncing the present lack of equality in Florida and warned of attendant ills in these words:

> "Failing to apply equality to assessments is depriving the individual assessor of one guideline for measurement in an area already controversial because of an absence of guidelines. In addition, the Court decision leaves the gates *open to influence and bribery in determining assets.* (emphasis added)

CONCLUSIONS

Because (a) Florida provides in reality no complete or certain remedy for petitioner's complaint against an assessment of TWENTY times that of her scores of neighbors (b) petitioner's Second Count is unrelated to taxation and hence immune to a 28 U.S.C. 1341 defense and (c) 28 U.S.C. 1341 should not have been used as a shield for conspiracy against petitioner's proper use of her property just because part of the conspiracy involves invidious conduct regarding assessment, the PETITION SHOULD BE GRANTED.

Respectfully submitted,

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